



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0678]

RIN 1625-AA08

Special Local Regulation; Tennessee River, Chattanooga, TN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation for navigable waters of the Tennessee River from mile 452.0 to 454.5. This action is necessary to provide for the safety of life on these navigable waters near Chattanooga, TN, during a swimming event on October 9, 2021. This proposed rulemaking would prohibit persons and vessels from being in the special local regulation unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE **15** DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2021-0678 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Third Class Joshua Rehl, Marine Safety

Detachment Nashville, U.S. Coast Guard; telephone 615-736-5421, email

Joshua.M.Rehl@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On October 9, 2021, the Chattanooga Open Water Swimmers notified the Coast Guard that it will be conducting the Swim the Suck from 9:30 a.m. to 11:30 a.m. on October 9, 2021. The swimmers will start at Suck Creek Boat Ramp and cross the river immediately and continue to swim downriver for 10 miles ending at TN River Gardens in Chattanooga, TN. The COTP has determined that potential hazards associated with the Swim the Suck swimming event will be a safety concern, and a temporary special local regulation is needed. This proposed rule is needed to the swimmerst in the navigable waters within the temporary special local regulation during the Swim the Suck event.

The purpose of this proposed rulemaking is to ensure the safety of life and the navigable waters within a 2.5 mile span of the river where the swimmers will be during the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

The Coast Guard is issuing this notice of proposed rulemaking (NPRM) with a 15-day prior notice and opportunity to comment pursuant to section (b)(3) of the Administrative Procedure Act (APA) (5 U.S.C. 553). This provision authorizes an agency to publish a rule in less than 30 days before its effective date for “good cause found and published with the rule.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for publishing this NPRM with a 15-day comment period because

it is impracticable to provide a 30-day comment period because we must establish this safety zone by October 9, 2021. A 15-day comment period would allow the Coast Guard to provide for public notice and comment, but also update the proposed regulation soon enough that the length of the notice and comment period does not compromise safety.

III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulation from 9:30 a.m. to 11:30 a.m. on October 9, 2021. The special local regulation would cover all navigable waters within 2.5 miles of the Swim the Suck event in the Tennessee River located between miles 452 and 454.5 in Chattanooga, TN. The duration of the zone is intended to ensure the safety of the swimmers in these navigable waters before, during, and after the scheduled 9:30 to 11:30 a.m. Swim the Suck event. No vessel or person would be permitted to enter the special local regulation without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The proposed safety zone would last for 2 hours, after which time vessels will be able to transit freely. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small

entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation lasting 2 hours that would prohibit entry between miles 452 to 454.5 of the Tennessee River. Normally such actions are categorically excluded from further review under paragraph L[61] and L[63a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to

which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2021-0678 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements,
Waterways

For the reasons discussed in the preamble, the Coast Guard is proposing to amend

33 CFR part 100 as follows:

PART 100-SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T08-0678 to read as follows:

§ 100.T08-0678 Chattanooga, TN. Tennessee River, mile marker 452 to mile marker 454.5.

(a) *Regulated area.* The regulations in this section apply to the following area:
All waters of the Tennessee River between mile 452 and 454.5 in the Tennessee River, extending from bank to bank within the river.

(b) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by Sector Ohio Valley command center at 502-779-5422. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(c) *Enforcement period.* This section will be enforced from 9:30 a.m. to 11:30 a.m. on October 9, 2021.

Dated: August 24, 2021

A. M. BEACH,
Captain, U.S. Coast Guard,
Captain of the Port Sector Ohio Valley

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